No. __-___

**In the Supreme Court of the United States**

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TIM SHOOP, Warden,

*Petitioner,*

v.

DANNY HILL,

*Respondent.*

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*ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

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# PETITION FOR WRIT OF CERTIORARI

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**CAPITAL CASE – NO EXECUTION DATE**

## QUESTION PRESENTED

In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Court held that the Eighth Amendment bars the execution of the intellectually disabled, but left it to the States to decide who qualifies for this limitation. *Id.* at 317. After *Atkins*, the Ohio Supreme Court adopted a common clinical definition to identify those with intellectual disabilities. Its definition included three elements: "(1) significantly subaverage intellectual functioning, (2) significant limitations in two or more adaptive skills, such as communication, self-care, and self-direction, and (3) onset before the age of 18." *State v. Lott*, 779 N.E.2d 1011, 1014 (Ohio 2002).

In this case, relying on the clinical judgments of two experts, an Ohio trial court rejected Respondent Danny Hill's *Atkins* claim because he did not meet the second *Lott* element (adaptive-skills deficits). In 2008, an Ohio appellate court affirmed. A decade later, the Sixth Circuit held that the state appellate court unreasonably applied *Atkins* within the meaning of the Antiterrorism and Effective Death Penalty Act of 1996. To reach this result, the circuit court repeatedly invoked *Moore v. Texas*, 137 S. Ct. 1039 (2017)—a case that was decided years after the Ohio appellate decision and that criticized a state court for allowing lay perceptions to trump clinical judgments.

The question presented is:

Did the Sixth Circuit properly use the *Moore* decision from 2017 to find that an Ohio court unreasonably applied *Atkins* in 2008, even though the Ohio court relied on the clinical judgments of experts to find that Hill was not intellectually disabled?

## LIST OF PARTIES

The Petitioner is Tim Shoop, the Warden of the Chillicothe Correctional Institution. Shoop is automatically substituted for the former Warden. *See* Fed. R. App. P. 43(c)(2); Sup. Ct. R. 35.3.

The Respondent is Danny Hill, an inmate imprisoned at the Chillicothe Correctional Institution.

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The Ohio Supreme Court's decision declining to review Hill's *Atkins* claim is reproduced at Pet. App. 334a. *State v. Hill*, 912 N.E.2d 107 (Ohio 2009). The intermediate appellate court's decision affirming the denial of Hill's *Atkins* claim is reproduced at Pet. App. 335a-380a. *State v. Hill*, 894 N.E.2d 108 (Ohio Ct. App. 2008). The Ohio trial court's unpublished decision denying Hill's *Atkins* claim is reproduced at Pet. App. 381a-493a. The Ohio Supreme Court's decision affirming Hill's conviction and sentence is reproduced at Pet. App. 494a-535a. *State v. Hill*, 595 N.E.2d 884 (Ohio 1992). The intermediate appellate court's decision affirming Hill's conviction and sentence is reproduced at Pet. App. 536a-613a. *State v. Hill*, Nos. 3720, 3745, 1989 Ohio App. LEXIS 4462 (Ohio Ct. App. Nov. 27, 1989).

## JURISDICTIONAL STATEMENT

The Sixth Circuit issued its decision on February 2, 2018. On April 9, 2018, it denied rehearing en banc. This petition timely invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") provides in relevant part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

## STATEMENT OF THE CASE

This 32-year-old case began with the torture, rape, and murder of a 12-year-old boy in Warren, Ohio. On the evening of September 10, 1985, Raymond Fife set off on his bicycle to a friend's house so the two could attend a Boy Scouts event. Pet. App. 494a-95a. When Fife did not get there, his friend telephoned the Fifes asking about his whereabouts. *Id.* at 495a. Fife's parents began a search. Around 9:30 p.m., his father found his naked, beaten, burnt body in a wooded field behind a local general store. *Id.* Although still alive, Fife had suffered horrific injuries. His "groin was swollen and bruised," and it "appeared that his rectum had been torn." *Id.* at 496a. His "underwear was found tied around his neck and appeared to have been lit on fire." *Id.* Fife died two days later. *Id.* The coroner "testified that [Fife] had been choked and had a hemorrhage in his brain." *Id.* The boy "sustained multiple burns, damage to his rectal-bladder area and bite marks on his penis." *Id.* He "had been impaled with an object that had been inserted through the anus, and penetrated through the rectum into the urinary bladder." *Id.*

After an investigation, law enforcement began to suspect Danny Hill and 17-year-old Timothy Combs of the murder. *Id.* at 496a-98a. Hill was indicted on many counts, including aggravated murder with death-penalty specifications. *Id.* at 498a.

### I. THE PRE-*ATKINS* PROCEEDINGS

Waiving his right to a jury, Hill stood trial before a three-judge panel. *Id.* at 500a. The panel convicted Hill of most counts and sentenced him to death. *Id.* at 501a. An intermediate appellate court affirmed, *id.* at 612a, as did a unanimous Ohio Su-

preme Court, *id.* at 535a. This Court denied certiorari. *Hill v. Ohio*, 507 U.S. 1007 (1993).

Hill sought post-conviction relief in state court on 18 grounds, but a trial judge and an appellate panel rejected them all. *State v. Hill*, No. 94-T-5116, 1995 Ohio App. LEXIS 2684 (Ohio Ct. App. June 16, 1995). The Ohio Supreme Court denied discretionary review. *State v. Hill*, 656 N.E.2d 951 (Ohio 1995).

In 1996, Hill turned to federal court, filing a petition advancing 28 claims under 28 U.S.C. § 2254. Pet. App. 256a-63a. A district court denied his petition. *Id.* at 332a. Hill appealed to the Sixth Circuit.

With Hill's appeal pending in 2002, this Court held that the Eighth Amendment bars the execution of the intellectually disabled. *Atkins v. Virginia*, 536 U.S. 304, 321 (2002). The Sixth Circuit determined that *Atkins* applies retroactively. Pet. App. 72a. Yet it recognized that *Atkins* "did not set down a procedure for determining whether an individual is sufficiently [intellectually disabled] to escape execution, leaving it to the states to develop 'appropriate ways to enforce the constitutional restrictions' on executing the [intellectually disabled]." *Id.* (quoting *Atkins*, 536 U.S. at 317). So the Sixth Circuit instructed the district court to dismiss Hill's *Atkins* claim for additional proceedings in state court, and to stay Hill's remaining claims. *Id.* at 76a.

## II. THE *ATKINS* PROCEEDINGS

### A. The State Courts Rejected *Atkins* Relief

1. Because this Court directed the States to implement *Atkins*, the parties in this case waited for the Ohio Supreme Court's guidance over how to determine whether an individual is intellectually disa-

bled. Pet. App. 389a. The Ohio Supreme Court provided this guidance in *State v. Lott*, 779 N.E.2d 1011 (Ohio 2002). *Lott* noted that the "[c]linical definitions" of intellectual disability from the American Association on Mental Retardation (now the American Association on Intellectual and Developmental Disabilities) and from the American Psychiatric Association "provide a standard for evaluating an individual's claim of [intellectual disability]." *Id.* at 1014. "These definitions," the court explained, "require (1) significantly subaverage intellectual functioning, (2) significant limitations in two or more adaptive skills, such as communication, self-care, and self-direction, and (3) onset before the age of 18." *Id.* *Lott* added that Ohio defendants bear the burden to prove that they meet these three elements by a preponderance of the evidence. *Id.* at 1015.

2. Hill asserted his *Atkins* claim in a second post-conviction petition. Pet. App. 381a. The trial court took testimony over 11 days in 2004 and 2005. *Id.* at 341a. With three primary experts and two rebuttal experts testifying, the court remarked that it would be "difficult to imagine a more impressive array of forensic academicians and clinicians gathered together to opine on a single case." *Id.* at 427a.

The primary experts were Drs. J. Gregory Olley (the State's expert), David Hammer (Hill's expert), and Nancy Huntsman (a neutral expert). All three interviewed Hill before the hearing. And all three opined that Hill malingered during their testing: He "knew the right answers but gave the wrong answers on purpose." Atk. Tr. 754; *id.* at 264-65, 754-62, 1005-07 ("Atk. Tr." refers to the *Atkins*-hearing transcript made part of the district-court record with a disc submitted at R.97-1. Page citations are to the

numbering in the bottom right-hand corner.). One expert gave an example: Hill "was able to answer fairly difficult questions"—"particularly in the vocabulary [section]"—"while missing very simple" ones. Atk. Tr. 1005. Another called the malingering evidence "conclusive." *Id.* at 754. Although the experts agreed that Hill purposely tanked the contemporaneous testing, they diverged on the ultimate diagnosis. Drs. Olley and Huntsman did not find Hill intellectually disabled, but Dr. Hammer disagreed.

*Dr. Olley.* The State selected Dr. Olley, a clinical professor from North Carolina. *Id.* at 636. Until this case, he had testified only for capital defendants, diagnosing intellectual disability in all nine of those prior engagements. *Id.* at 644, 726, 748. Dr. Olley opined that Hill's IQ scores were two standard deviations below the mean, and so he satisfied the first *Lott* factor. *Id.* at 693, 783.

Olley further opined, however, that the evidence was insufficient to establish that Hill's adaptive skills were two standard deviations below the mean. *Id.* at 783. To support this conclusion, he identified, among other things, Hill's scores on four childhood adaptive-skills tests, which were "not supportive of a diagnosis of [intellectual disability]." *Id.* at 700. He acknowledged that, for diagnoses "at the cusp" of intellectual disability, the information "you get about adaptive behavior will be mixed." *Id.* at 697. But he observed that the tests were the only information from Hill's youth that "looked comprehensively at adaptive behavior." *Id.* at 699. Olley also noted that Hill had reached out to the press, something he had "never" seen an intellectually disabled inmate do. *Id.* at 763. In the end, while conceding that Hill's case

was "close," *id.* at 861, Dr. Olley opined that Hill did not meet the intellectual-disability criteria.

*Dr. Hammer.* Hill selected Dr. Hammer, an Ohio clinical professor. *Id.* at 142. Hammer diagnosed Hill as intellectually disabled. *Id.* at 377. He acknowledged the "absence of reliable" information about Hill from his youth to conduct a standardized adaptive-skills evaluation, but believed he had enough information to make the diagnosis from the available records. *Id.* at 431.

*Dr. Huntsman.* The trial court had a non-participating psychiatrist choose a third expert. *Id.* at 957-58. That process yielded Dr. Huntsman, an Ohio forensic psychologist. *Id.* at 959-60. Huntsman agreed that Hill's IQ scores were more than two standard deviations below the mean. *Id.* at 1128. But, like Olley, she found that Hill was not intellectually disabled because his "level of adaptive behavior is considerably above" the threshold for that part of the diagnosis. *Id.* at 1049-50.

In addition to hearing from the experts, the trial court took testimony from prison workers. They testified, for example, that Hill had noticed a discrepancy in his pay, *id.* at 1252-53, and that he had conversed with a guard about *Atkins*, *id.* at 1377-78.

Following a months-long break, the trial court heard testimony from two rebuttal experts about how to interpret the scores from the adaptive-skills tests that Hill had taken as a child. *E.g.*, *id.* at 1503, 1721-22, 1726. The court excluded the opinion of Hill's expert as unreliable, and also credited the State's rebuttal expert over Hill's. Pet. App. 460a.

After considering all relevant evidence, the trial court found that Hill failed to meet his burden to show that he was intellectually disabled under *Lott*. Pet. App. 444a-90a. It initially found that Hill *met* the first *Lott* factor because he had subaverage intellectual functioning. *Id.* at 444a-50a.

The court next considered Hill's adaptive skills. *Id.* at 450a-86a. An intellectual-disability finding required significant limits in two of the following categories: "communication; self-care; home living; social/interpersonal skills; use of community sources; self-direction; functional academic skills; work; leisure; health; and safety." *Id.* at 450a-51a & n.64. Applying this standard, the court found "critical" Hill's "decision to sabotage" the experts' testing because it forced them to rely on pre-18 testing as well as "anecdotal evidence." *Id.* at 454a-55a. The court then detailed the evidence, including the expert opinions, teacher observations, prison-staff observations, videotaped interviews, and the court's view of Hill in the courtroom. *Id.* at 456a-86a. The court held—based on the opinions of Drs. Olley and Huntsman—that Hill did not meet this factor. *Id.* at 486a.

As to the third *Lott* factor (onset before 18), the court again relied on Drs. Olley and Huntsman to conclude that Hill also did not meet the adaptive-skills factor when he was a child. *Id.* at 488a.

3. In 2008, a divided appellate court affirmed. *Id.* at 335a. For the adaptive-skills factor, the court recognized that the experts could obtain "[n]o reliable results" from their testing because of Hill's malingering. *Id.* at 359a-60a. The trial court and experts had to rely on second-best evidence as a "result of Hill's failure to cooperate with the experts retained to

evaluate him." *Id.* at 363a-64a. This fact, the court noted, distinguished an Ohio Supreme Court case that had criticized a lower court for using anecdotal evidence over expert opinions. *Id.* at 366a-68a (discussing *State v. White*, 885 N.E.2d 905 (Ohio 2008)). Here, unlike in *White*, the experts themselves used the anecdotal evidence to reach their judgments, and the trial court had to rely on the experts' evaluation of that evidence given Hill's malingering. *Id.* The panel found "credible evidence" supporting the trial court's adaptive-skills finding. *Id.* at 368a.

One judge dissented. She agreed that all experts had found the adaptive-skills testing "unreliable," forcing the courts to examine "historical data." *Id.* at 377a (O'Toole, J., dissenting). But the dissent believed that this data—such as evaluations from individuals at Hill's school for the intellectually disabled—proved the adaptive-skills factor. *Id.* at 379a.

4. The Ohio Supreme Court declined review. Pet. App. 334a.

### B. A District Court Denied Relief Under AEDPA, But The Sixth Circuit Reversed

1. Hill raised his *Atkins* claim in his federal case. Pet. App. 78a. The district court rejected the claim. It suggested that the state appellate court's opinion relied on "certain weak evidence" and contained "flawed analysis," *id.* at 135a, but held that AEDPA's "standard for relief" barred it from undoing the state judgment, *id.* at 193a. "[M]ost importantly," the district court noted, two expert opinions supported that judgment. *Id.* at 192a.

2. The Sixth Circuit reversed. It treated the question whether Hill met the adaptive-skills factor

as a legal one subject to the deferential standards in 28 U.S.C. § 2254(d)(1). Pet. App. 12a-13a. Yet the Sixth Circuit concluded that the "state court judgment" from 2008 "amounted to an unreasonable application of the standard articulated by the Supreme Court in *Atkins* and as later explained by" *Hall v. Florida*, 134 S. Ct. 1986 (2014), and *Moore v. Texas*, 137 S. Ct. 1039 (2017). Pet. App. 12a.

To reach this result, the court started by describing the clinical standards for intellectual disability. *Id.* at 14a-18a. While its earlier opinion conceded that *Atkins* left it to the States to identify those who are intellectually disabled, *id.* at 72a, the court now asserted that *Atkins* compelled the three-part definition that *Lott* had adopted, *id.* at 14a-15a. It added that *Hall* and *Moore* had since held that state decisions "'must be informed by the medical community's diagnostic framework.'" *Id.* at 15a (quoting *Moore*, 137 S. Ct. at 1048) (internal quotation marks omitted). Turning specifically to the adaptive-skills factor, the court noted that *Moore* had criticized a Texas court for relying on adaptive strengths in one area (such as self-care) to offset adaptive deficits in another (such as functional academics). *Id.* at 15a-16a. It found that this holding from *Moore* and the holding from *Hall* (that state courts must account for margins of error in IQ scores) "were compelled by *Atkins*," *id.* at 16a, and showed what *Atkins* had "clearly established," *id.* at 18a.

Under this law, the Sixth Circuit found, the Ohio courts "made the same basic mistake as the Texas courts" in *Moore*. *Id.* at 6a, 19a-38a. The Sixth Circuit identified two overarching errors: The state courts allegedly "plac[ed] undue emphasis on Hill's adaptive strengths, as opposed to his adaptive weak-

nesses," and they allegedly "rel[ied] too heavily on the observations of prison guards concerning Hill's behavior in the highly regimented environment of his prison block." *Id.* at 20a.

Starting with the first alleged error, the Sixth Circuit thought that the trial court wrongly "focused" on Hill's adaptive strengths in communication and self-direction instead of his adaptive weaknesses in other areas. *Id.* at 20a-21a. Conducting a fresh review of the record, it identified two areas of deficits (functional academics and self-care) and suggested that there may be two more (social skills and self-direction). *Id.* at 21a. For functional academics, the court described Hill's evidence, including his schools' treatment of him as intellectually disabled, his low IQ scores, and his low reading skills. *Id.* at 21a-23a. For self-care, the court again described Hill's evidence, including the need to remind him when he was 14 to shower and brush his teeth. *Id.* at 23a.

The Sixth Circuit criticized the Ohio courts' contrary decisions. Legally, the Sixth Circuit found that the state courts wrongly relied on strengths in some adaptive-skills categories to rebut deficits in others. *Id.* at 25a. Factually, the Sixth Circuit found that the state courts improperly weighed the evidence. *Id.* at 25a-29a. And while the state courts relied on the clinical judgments of experts, the Sixth Circuit held that "the Ohio courts should have rejected the expert testimony in this case." *Id.* at 30a. The court determined that those experts made the same medical mistakes as the state courts. *Id.* at 30a-32a.

Turning to the second alleged error, the Sixth Circuit found that the state courts placed too much weight on Hill's prison behavior. *Id.* at 32a. It noted

that medical literature prohibited clinicians from relying on behavior in regulated environments. *Id.* at 32a-33a. So the Sixth Circuit found the state courts' reliance on prison-worker testimony unreasonable. *Id.* at 33a-35a. Because the state courts' "analysis disregard[ed] prevailing clinical standards," the Sixth Circuit held, "it amount[ed] to an unreasonable application of the Supreme Court's decisions in *Atkins*, *Hall*, and *Moore*." *Id.* at 35a. The court relegated to a footnote the reason why the state courts relied on this evidence: The experts who administered adaptive-skills tests "determined that the results of these tests were not reliable because Hill was 'faking' the answers." *Id.* at 10a n.7.

3. The Sixth Circuit denied en banc review. Pet. App. 1a-2a.

## REASONS FOR GRANTING THE PETITION

### I. THE SIXTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S AEDPA CASES AND WITH THE AEDPA CASES FROM OTHER CIRCUIT COURTS

By granting relief to Hill based primarily on *Moore v. Texas*, 137 S. Ct. 1039 (2017), and *Hall v. Florida*, 134 S. Ct. 1986 (2014), the Sixth Circuit disregarded this Court's command that federal courts applying AEDPA should look *only* to this Court's specific holdings predating the state decision. In doing so, the Sixth Circuit created a circuit split over whether federal courts may use *Moore* or *Hall* to hold that earlier-in-time state decisions unreasonably applied *Atkins v. Virginia*, 536 U.S. 304 (2002).

### A. The Sixth Circuit's Decision Conflicts With This Court's AEDPA Cases

AEDPA bars federal courts from granting relief to a state prisoner on a federal constitutional claim unless the state court's "adjudication of the claim" "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). The Sixth Circuit's decision violates this Court's framework for applying § 2254(d)(1).

#### *1. Under AEDPA, federal courts may look only to this Court's specific holdings that governed when a state court ruled*

The Court has provided both a general standard and specific rules for lower courts to follow when applying § 2254(d)(1). As a general matter, the Court has told circuit courts that § 2254(d)(1)'s deferential standards have real effect. A federal court may not override a state decision "'simply because the federal court disagrees with the state court.'" *Coleman v. Johnson*, 566 U.S. 650, 651 (2012) (citation omitted). AEDPA requires more than just "'an *incorrect* application of federal law'"; it requires "'an *unreasonable* application of federal law.'" *Renico v. Lett*, 559 U.S. 766, 773 (2010) (citation omitted). To be "unreasonable," moreover, a decision must be "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011). In other words, a petitioner must show an "'extreme malfunction[] in the state criminal justice system[].'" *Woods v. Donald*, 135 S. Ct. 1372, 1376 (2015) (citation omitted).

As a specific matter, the Court has provided concrete guideposts for assessing whether a petitioner has met this "difficult" standard. *Harrington*, 562 U.S. at 102. *First*, the phrase "clearly established Federal law, as determined by the Supreme Court" refers to cases *available* to the state court at the time of its decision, not to cases issued after the state court's decision. That is, "[s]tate-court decisions are measured against this Court's precedents as of 'the time the state court renders its decision.'" *Cullen v. Pinholster*, 563 U.S. 170, 182 (2011) (citation omitted). Federal second-guessing of state decisions must be based on precedent that the state courts actually had the ability to apply. AEDPA does not require state courts to forecast future trends in this Court's cases. *See Greene v. Fisher*, 565 U.S. 34, 38 (2011).

*Second*, the phrase "clearly established Federal law" reaches only the "'*holdings*, as opposed to the *dicta*, of' cases that existed at the relevant time. *Carey v. Musladin*, 549 U.S. 70, 74 (2006) (emphases added; citation omitted). "Section 2254(d)(1) provides a remedy for instances in which a state court unreasonably *applies* this Court's precedent; it does not require state courts to *extend* that precedent or license federal courts to treat the failure to do so as error." *White v. Woodall*, 134 S. Ct. 1697, 1706 (2014). Thus, federal courts may not "introduce[] rules not clearly established under the guise of extensions to existing law." *Yarborough v. Alvarado*, 541 U.S. 652, 666 (2004). If a later-in-time decision "alter[s] or add[s] to" the Court's preexisting cases, that later addition is not clearly established law. *Thaler v. Haynes*, 559 U.S. 43, 48 n.2 (2010). That is so even if a circuit court believes that the new case represented "'the logical next step from'" the existing

law. *Virginia v. LeBlanc*, 137 S. Ct. 1726, 1729 (2017) (citation omitted).

*Third*, to qualify as "clearly established Federal law" the relevant legal principle must be articulated at a sufficiently *specific* level. *Woods*, 135 S. Ct. at 1377. Framing the relevant legal principle at too "high [a] level of generality" (such as an alleged "right" to present evidence bearing on witness credibility) can impermissibly "transform even the most imaginative extension of existing case law" into "'clearly established Federal law.'" *Nevada v. Jackson*, 569 U.S. 505, 512 (2013) (citation omitted). Thus, this Court has rejected a claim when the petitioner asserted a legal principle that was "far too abstract." *Lopez v. Smith*, 135 S. Ct. 1, 4 (2014). In addition, "[t]he more general the rule" that governs a particular claim, "the more leeway [state] courts have" to reach case-by-case results when resolving the claim. *Sexton v. Beaudreaux*, 2018 U.S. LEXIS 4038, at *10 (U.S. June 28, 2018) (citation and internal quotation marks omitted).

### *2. The Sixth Circuit could grant AEDPA relief to Hill only by disregarding this Court's established principles*

This Court's AEDPA framework shows that the Sixth Circuit's "opinion was not just wrong. [The opinion] also committed fundamental errors that this Court has repeatedly admonished courts to avoid." *Cf. Sexton*, 2018 U.S. LEXIS 4038, at *9. The Sixth Circuit held that the Ohio courts violated *Atkins*, *Hall*, and *Moore* in two ways: (1) by focusing on Hill's adaptive strengths rather than his deficits, and (2) by over-relying on Hill's behavior in the controlled prison environment. Pet. App. 20a. But *Atkins* cre-

ated only a general right for the intellectually disabled not to be executed; it did not create specific standards for identifying the intellectually disabled. Further, *Hall* and *Moore* postdated the Ohio decisions by years. When the Ohio appellate court ruled in 2008, neither *Atkins* nor *Hall* nor *Moore* had "clearly established" the two specific principles on which the Sixth Circuit relied. That ends the matter under AEDPA.

a. *Atkins.* The Sixth Circuit wrongly held that *Atkins* established that state courts must not "overemphasize[] . . . adaptive strengths" or place undue weight on an individual's behavior in prison's "controlled environment." *Id.* at 19a. By doing so, the Sixth Circuit flouted this Court's principle that "clearly established" law means the "'holdings, as opposed to the dicta, of'" this Court's cases. *Carey*, 549 U.S. at 74 (citation omitted).

While *Atkins* at least existed when the Ohio appellate court ruled, one will search that opinion in vain to find any hint of the specific rules that the Sixth Circuit claimed the case established. *Atkins* reached only the most general of "holdings." It held that "death is not a suitable punishment for [an intellectually disabled] criminal." *Atkins*, 536 U.S. at 321. But the Court added an important qualifier. It explained that "serious disagreement" existed over "which offenders are in fact" intellectually disabled. *Id.* at 317. The Court thus left "'to the States the task of developing appropriate ways to enforce the constitutional restriction upon its execution of sentences.'" *Id.* (citation omitted). This "express reservation" shows that *Atkins* did *not* establish specific rules concerning how States should identify individuals who qualify as intellectually disabled. *Woodall*,

134 S. Ct. at 1703-04 (relying on an earlier opinion's express reservation to find that it had not clearly established the legal principle in dispute).

This Court's post-*Atkins* decisions confirm that *Atkins* did not clearly establish specific standards for identifying the intellectually disabled. The Court has explained that *Atkins* "did *not* provide definitive procedural or substantive guides for determining when a person who claims [intellectual disability] 'will be so impaired as to fall within [*Atkins*' compass].'" *Bobby v. Bies*, 556 U.S. 825, 831 (2009) (emphasis added; citation omitted). And it has reversed courts that used *Atkins* to create mandates that it did not compel. *Schriro v. Smith*, 546 U.S. 6, 7 (2005) (reversing a circuit court for requiring a State to hold a jury trial to resolve an *Atkins* claim).

The Sixth Circuit's earlier opinion in this very case also confirms this point. It initially remanded Hill's *Atkins* claim to state court precisely because *Atkins* "did not set down a procedure for determining whether an individual is sufficiently [intellectually disabled] to escape execution." Pet. App. 72a. Nowhere in that opinion did the Sixth Circuit tell the state courts that, when evaluating Hill's *Atkins* claim, they must not overemphasize Hill's adaptive strengths or rely on his prison behavior. *Id.* at 68a-76a. Yet, after the state courts rejected Hill's claim, the Sixth Circuit reversed course, claiming that *Atkins* did clearly establish those specific rules. *Id.* at 19a-20a. The Sixth Circuit was right the first time.

This Court's recent summary reversal in *LeBlanc* leaves no doubt that the Sixth Circuit wrongly relied on *Atkins*. In *Graham v. Florida*, 560 U.S. 48 (2010), the Court held that the Eighth Amendment bars "ju-

venile offenders convicted of nonhomicide offenses from being sentenced to life without parole," and that such offenders should be given a meaningful opportunity to seek release. *LeBlanc*, 137 S. Ct. at 1727. Like *Atkins*, however, *Graham* "left it to the States, 'in the first instance, to explore the means and mechanisms for compliance' with [its] rule." *Id.* (quoting *Graham*, 560 U.S. at 75). The Virginia Supreme Court held that Virginia's "geriatric release program" satisfied *Graham*, but the Fourth Circuit disagreed under AEDPA. *Id.* at 1727-28. This Court reversed the Fourth Circuit. The specific question in *LeBlanc* "was not presented" in *Graham*, so the state court was not "objectively unreasonable" in refusing to expand *Graham* to cover that question. *Id.* at 1729. Just as the general *Graham* rule did not resolve its specific application in *LeBlanc*, so too the general *Atkins* rule does not resolve its specific application in this case. *See also Dunn v. Madison*, 138 S. Ct. 9, 12 (2017).

The Sixth Circuit's contrary views do not justify its use of *Atkins* here. The court repeatedly noted that footnote 3 of *Atkins* referenced the intellectual-disability definitions from two medical organizations. Pet. App. 5a, 14a, 16a, 17a, 32a (citing *Atkins*, 536 U.S. at 308 n.3). Footnote 3, the Sixth Circuit claimed, showed that *Atkins* meant to compel States to follow "the consensus of the medical community" when identifying the intellectually disabled. *Id.* at 16a. This footnote cannot bear the heavy weight that the Sixth Circuit placed on it. For starters, footnote 3 simply identified clinical definitions in the opinion's *fact* section; it did not dictate any specific definition as a *legal* holding. *Atkins*, 536 U.S. at 308 n.3.

More importantly, the Sixth Circuit could find that *Atkins* clearly established the two specific principles on which it relied only by "fram[ing] the issue at too high a level of generality." *Woods*, 135 S. Ct. at 1377. The Sixth Circuit's assertion that *Atkins* incorporated "the consensus of the medical community" into the Eighth Amendment, Pet. App. 16a, "is far too abstract to establish clearly the" two "specific rule[s] [that Hill] needs," *Lopez*, 135 S. Ct. at 4. At most, such a proposition creates a general standard that gives States broad "'leeway'" to reach case-by-case results. *Sexton*, 2018 U.S. LEXIS 4038, at *10 (citation omitted). *Atkins*'s "highly generalized standard" "bears scant resemblance to the . . . test employed by the Sixth Circuit here." *Parker v. Matthews*, 567 U.S. 37, 49 (2012).

b. *Hall & Moore.* The Sixth Circuit's reliance on *Hall* and *Moore* conflicted even more with this Court's precedent. The Sixth Circuit stated—twice—that the Ohio decisions engaged in an "unreasonable application" of "*Hall[]* and *Moore*." Pet. App. 32a, 35a. The Sixth Circuit thus treated *Hall* and *Moore* as "clearly established" law that the Ohio courts could unreasonably apply even before the two cases came into existence. But "[s]tate-court decisions are measured against this Court's precedents as of '*the time the state court renders its decision.*'" *Cullen*, 563 U.S. at 182 (emphasis added; citation omitted). The state appellate court rejected Hill's *Atkins* claim in 2008, Pet. App. 335a, years before this Court issued *Hall* (in 2014) and *Moore* (in 2017). So the Sixth Circuit improperly graded the state courts' decisions based on materials that were unavailable to them. *Greene*, 565 U.S. at 38.

*Greene* provides a useful analogy. That case involved the scope of *Bruton v. United States*, 391 U.S. 123 (1968), which held "that the Confrontation Clause forbids the prosecution to introduce a nontestifying codefendant's confession implicating the defendant in the crime." *Greene*, 565 U.S. at 36. Under *Bruton*, then, the court must sever the two defendants' trials if the prosecution plans to introduce the confession against the codefendant. *Id.* In *Greene*, the state court held that severance was *not* required under *Bruton* because the court redacted the names of the other parties implicated by the confession. *Id.* *After* a state appellate court affirmed, this Court determined that those kinds of redactions did not prevent the need to sever. *Id.* at 36-37 (discussing *Gray v. Maryland*, 523 U.S. 185 (1998)). *Gray* held that the facts were still "'similar enough to'" *Bruton* to warrant "'the same legal result[].'" *Id.* (quoting *Gray*, 523 U.S. at 195). But *Greene* denied relief under AEDPA because *Gray* was not "clearly established Federal law" at the time of the state decision. *Id.* at 40. For AEDPA purposes, *Gray* is to *Bruton* what *Hall* and *Moore* are to *Atkins*. *See also Thaler*, 559 U.S. at 48 n.2. None is clearly established law for earlier-in-time state-court decisions.

Despite the Sixth Circuit's conclusion that the Ohio courts unreasonably applied *Hall* and *Moore*, Pet. App. 32a, the court elsewhere conceded that AEDPA prevented it from relying on those two decisions as clearly established law, *id.* at 7a, 16a. But the Sixth Circuit's "perfunctory statement[s]" to this effect were in name only. *Sexton*, 2018 U.S. LEXIS 4038, at *10. The Sixth Circuit repeatedly rested its conclusion that the Ohio courts had erred on *Moore*'s specific principles and quotations. Pet. App. 15a,

17a, 18a, 21a, 25a, 30a, 35a. At one point, the Sixth Circuit took the Ohio courts to task for assessing Hill's claim using a "practice *Moore* expressly reject[ed]." *Id.* at 25a (quoting *Moore*, 137 S. Ct. at 1050 n.8). At another, it relied on *Moore* for the assertion that the Ohio courts improperly examined Hill's strengths. *Id.* at 21a (quoting *Moore*, 137 S. Ct. at 1050). While *stating* that *Moore* was not clearly established law, the Sixth Circuit *treated* the decision as if it were. Indeed, "it is not apparent how the Court of Appeals' analysis would have been any different" if *Moore* had preceded the state decisions in this case. *Harrington*, 562 U.S. at 101.

The Sixth Circuit lastly claimed that *Brumfield v. Cain*, 135 S. Ct. 2269 (2015), showed that federal courts may invoke *Hall*'s principles under AEDPA even for state decisions that predate *Hall*. Pet. App. 18a. Not so. *Brumfield* addressed a Louisiana decision that rejected the defendant's *Atkins* claim "[w]ithout affording him an evidentiary hearing or granting him time or funding to secure expert evidence." 135 S. Ct. at 2273. The Court said nothing about whether *Hall* qualifies as clearly established law *under § 2254(d)(1)* because it granted relief on the ground that the state court had engaged in an "'unreasonable determination of the facts'" *under § 2254(d)(2)*. *Id.* The Sixth Circuit thus misread *Brumfield*'s two citations to *Hall*. One citation praised the Louisiana Supreme Court for "*anticipat[ing]*' *Hall*, *id.* at 2278 (emphasis added)—which says little about whether *Hall*'s principles were clearly established before the decision. The other citation quoted *Hall* for the settled point that the death sentence is the law's most severe. *Id.* at 2283. Neither citation shows that *Brumfield* considered *Hall* "clear-

ly established" within the meaning of § 2254(d)(1) for Brumfield's pre-*Hall* state adjudication.

If anything, the contrast between *Brumfield* and this case is striking. In that case, the state court quickly rejected the *Atkins* claim without giving the defendant experts or a hearing. *Id.* at 2273. In this case, the state court held hearings over 11 days. Pet. App. 341a. And those hearings included five experts, which is why the Ohio trial court found it "difficult to imagine a more impressive array of forensic academicians and clinicians gathered together to opine on a single case." *Id.* at 427a.

* * *

At day's end, the Sixth Circuit committed two basic AEDPA errors—errors that conflict with this Court's well-established law. It treated *Atkins*'s general holding as establishing specific principles nowhere contained in the decision. And it relied on specific holdings from *Hall* and *Moore* that postdated the Ohio appellate court's decision by many years. Both errors warrant this Court's intervention.

### B. The Sixth Circuit's Decision Creates A Circuit Conflict

The Sixth Circuit is the first circuit court to conclude that, for AEDPA purposes, the "holdings in *Hall* and *Moore* were compelled by *Atkins*." Pet. App. 16a. Other courts that have addressed the relationship between *Atkins* and *Hall* or *Moore* have held that the first opinion did not "compel" the latter two for AEDPA purposes. This circuit conflict confirms the need for this Court's review.

1. Before the decision below, circuit courts had concluded that the holdings from *Hall* or *Moore* can-

not be used under AEDPA when reviewing state decisions that predate those two cases. *E.g.*, *Cain v. Chappell*, 870 F.3d 1003, 1024 n.9 (9th Cir. 2017); *Kilgore v. Sec'y, Fla. Dep't of Corr.*, 805 F.3d 1301, 1311 (11th Cir. 2015); *Smith v. Duckworth*, 824 F.3d 1233, 1245 (10th Cir. 2016).

Start with the Eleventh Circuit. *Kilgore* considered a Florida Supreme Court decision that rejected an *Atkins* claim under Florida's then-existing bright-line rule requiring an IQ score below 70. 805 F.3d at 1308. After the state decision, *Hall* held that Florida's bright-line rule violated the Eighth Amendment. *Id.* Despite *Hall*, the Eleventh Circuit denied relief to Kilgore under AEDPA. *Id.* at 1310-12. It noted that "[b]ecause the Florida Supreme Court's decisions in Kilgore's case predated *Hall*, *Hall*'s holding was not 'clearly established' for purposes of § 2254(d)(1)." *Id.* at 1310. It then rejected Kilgore's backup argument that *Hall* merely clarified *Atkins*. *Id.* at 1310-12. The Eleventh Circuit reasoned that *Atkins* had *not* established standards for determining whether an individual qualified as intellectually disabled and left it to the States to determine those standards. *Id.* at 1311. Thus, *Hall*'s later holding about margins of error in IQ scores "changed course" by imposing substantive limits on the States' intellectual-disability definitions. *Id.* But "[n]othing in *Atkins* suggested that a bright-line IQ cutoff of 70 ran afoul of the prohibition on executing the intellectually disabled." *Id.* at 1312. That prevented relief under AEDPA. *Id.*; *see Arbelaez v. Fla. Dep't of Corr.*, 662 F. App'x 713, 723 n.10 (11th Cir. 2016).

The Tenth Circuit reached the same result in *Smith*. There, it explained that "*Atkins* itself does not discuss the concept of the [standard error of

measurement], and nothing in that decision mandates adjustment of IQ scores to account for inherent testing error." 824 F.3d at 1245. As for *Hall*, the Tenth Circuit explained that it "provide[d] no basis for [the court] to disturb" the relevant state decision "[b]ecause [it] was decided more than three years after" that decision. *Id.*

In *Cain*, the Ninth Circuit said the same thing about *Moore* when rejecting an *Atkins* claim under AEDPA. 870 F.3d at 1024. The court recognized that the state decision had resolved "a battle of the experts" by siding with the State's expert over Cain's. *Id.* And while Cain had relied on *Moore* to justify relief, the court noted that "*Moore* is not an AEDPA case and thus does not address the difficult burden Cain bears to prove his entitlement to relief under AEDPA standards." *Id.* at 1024 n.9. The Ninth Circuit added that, "having been decided just this spring, *Moore* itself cannot serve as 'clearly established' law at the time the state court decided Cain's claim." *Id.* The Ninth Circuit has thus held that *Hall* and *Moore* "might redefine and expand *Atkins*," but they cannot show that a court unreasonably applied *Atkins*. *Ybarra v. Filson*, 869 F.3d 1016, 1024-25 (9th Cir. 2017). "This is especially true with regard to *Moore*," the Ninth Circuit noted, because it "changed the course of the Supreme Court's intellectual disability jurisprudence." *Id.* at 1025 n.9.

2. The Sixth Circuit's decision conflicts with these cases. It held that, "[a]lthough they were decided after the state court decisions in this case, the primary holdings in *Hall* and *Moore* were compelled by *Atkins*." Pet. App. 16a; *id.* at 18a (noting "that the holdings of *Moore* and *Hall* were required by *Atkins*"). The court even said that *Moore*'s *specific*

"holding regarding adaptive strengths [was] merely an application of what was clearly established by *Atkins*," and so could be used to overturn decisions decided years before *Moore*. *Id.* at 7a. Interpreting *Moore* as "merely an application" of *Atkins*, *id.*, is a far different view than interpreting *Moore* as fundamentally "chang[ing] the course" of this Court's jurisprudence, *Ybarra*, 869 F.3d at 1025 n.9. This square split solidifies the need for review.

## II. SETTING AEDPA ASIDE, THE SIXTH CIRCUIT'S DECISION CONFLICTS WITH *MOORE* BY SUBSTITUTING LAY OPINIONS FOR EXPERT OPINIONS

Even if *Moore* applied, the Sixth Circuit's decision could not stand. While *Moore* emphasized the need for medical testimony to address *Atkins* claims, the Sixth Circuit could grant relief only by rejecting that medical testimony.

A. Arising from a state court rather than on federal review under AEDPA, *Moore* addressed an *Atkins* claim brought by a Texas defendant. 137 S. Ct. at 1044. A Texas habeas court originally recommended granting relief to the defendant, basing its conclusion on the "current medical diagnostic standards" in treatises. *Id.* at 1045. "[R]elying on testimony from several mental-health experts, the habeas court found significant adaptive deficits." *Id.* at 1046. But the Texas Court of Criminal Appeals rejected these recommendations and denied relief. *Id.* To decide the adaptive-skills factor, the Texas Court of Criminal Appeals used "'seven evidentiary factors'" that it had articulated in *Ex parte Briseno*, 135 S.W.3d 1 (Tex. Crim. App. 2004). *Id.*

This Court reversed. When addressing the adaptive-skills factor, the Court noted that the state court

had "overemphasized Moore's perceived adaptive strengths" based on such anecdotal evidence as the fact that he "lived on the streets, mowed lawns, and played pool for money." *Id.* at 1050. In particular, the Court noted that the lower court had engaged in "the arbitrary offsetting of deficits against unconnected strengths" in other adaptive-skills categories. *Id.* at 1050 n.8. Again citing clinical treatises, the Court next suggested that the lower court had overrelied on "Moore's improved behavior in prison." *Id.* at 1050. Most significantly, the Court criticized the lower court for using the *Briseno* factors, suggesting that courts may not use "lay perceptions of intellectual disability" to overcome "medical and clinical appraisals." *Id.* at 1051-52. The Court concluded that "[b]ecause *Briseno* pervasively infected the [lower court's] analysis, the decision of that court cannot stand." *Id.* at 1053.

B. The Sixth Circuit's decision conflicts with *Moore*. The Ohio courts did not permit "lay perceptions of intellectual disability" to trump the experts' views. *Moore*, 137 S. Ct. at 1051. As a general matter, Ohio has never used anything like the *Briseno* factors that *Moore* criticized. Just the opposite. The Ohio Supreme Court has reversed a lower court for ignoring expert testimony and relying on lay evidence with respect to the adaptive-skills factor. *State v. White*, 885 N.E.2d 905, 913-15 (Ohio 2008).

As a specific matter, the Ohio trial court permitted five "impressive" experts to testify. Pet. App. 409a, 423a-27a. The State's expert, Dr. Olley, had testified nine prior times, and "always appeared in support of Death Row prisoners." Pet. App. 485a; *id.* at 184a-85a. Further, the trial court's conclusion that Hill failed to meet the adaptive-skills factor re-

lied primarily on experts. *Id.* at 486a. The state appellate court, moreover, addressed the Ohio Supreme Court's *White* decision, and held that the trial court had properly used lay anecdotal evidence because the experts had used that evidence and because Hill's malingering had necessitated its use. *Id.* at 366a-68a. This reliance on experts also led the district court to uphold the state decisions under AEDPA. *Id.* at 192a.

To grant relief, therefore, the Sixth Circuit adopted an approach that *contradicts Moore*. The circuit court substituted its *lay* opinions of the anecdotal evidence and medical literature for *expert* opinions. *Id.* at 30a. It said: "Even though *Atkins* requires that determinations regarding intellectual disability be informed by the medical community, . . . the Ohio courts should have *rejected the expert testimony* in this case." *Id.* (emphasis added). But *Moore* held that "adjudications of intellectual disability should be '*informed by the views of medical experts.*'" *Moore*, 137 S. Ct. at 1044 (quoting *Hall*, 134 S. Ct. at 2000) (emphasis added). *Moore* does not support the Sixth Circuit's decision to reject those views.

The Sixth Circuit's two overarching concerns with the state courts' decisions show why it should have relied on the experts' views of the evidence rather than on its lay understanding. Pet. App. 20a.

*Adaptive Strengths/Deficits.* The Sixth Circuit viewed *Moore*'s statement that clinical standards "focus[] the adaptive-functioning inquiry on adaptive *deficits*," 137 S. Ct. at 1050, as an invitation to second-guess the experts because they were alleged to have focused "almost exclusively" on *strengths*, Pet. App. 31a. The court was wrong.

To begin with, the court identified nothing suggesting that the experts engaged in what *Moore* found problematic—"the arbitrary offsetting of deficits against unconnected strengths" in other adaptive-skills categories. 137 S. Ct. at 1050 n.8. Neither Dr. Olley nor Dr. Huntsman suggested, for example, that Hill did not have a deficit in, say, functional academics because he had strengths in communication. They simply found the anecdotal evidence on which they were forced to rely insufficient to justify a diagnosis that Hill had substantial deficits. *E.g.*, Atk. Tr. 783. The use of such "anecdotal" information, said Dr. Olley, is difficult because it needs to be framed to answer the *clinical* question—whether the conduct is "two standard deviations below average" for the adaptive skill. *Id.* at 665; *Moore*, 137 S. Ct. at 1046. Anecdotal evidence of, for example, skipping showers does not suffice: "[A]daptive behavior is not about individual instances"; it is "about typical behavior across very many settings." Atk. Tr. 714. Yet the Sixth Circuit did not even acknowledge that the required deficit must be two standard deviations below the mean. Nor did it acknowledge that childhood testing did "not support [an intellectual-disability]" diagnosis. Atk. Tr. 885. Ohio's courts did not eschew medical standards; they relied on experts who, unlike the Sixth Circuit, grappled with their subtleties.

*Prison Behavior.* The Sixth Circuit also asserted, again based on *Moore*, that the state courts and experts placed "undue weight" on Hill's prison behavior. Pet. App. 32a. This reliance on prison behavior, the court said, violated clinical standards that "prohibited the assessment of adaptive skills in atypical environments like prison." *Id.* at 32a-33a. The court was again wrong.

The experts did not "disregard the medical consensus" concerning prison behavior. *Id.* at 35a (citing *Moore*, 137 S. Ct. at 1053). They exercised the caution that *Moore* directed courts to apply when using that behavior to assess adaptive skills. *See* 137 S. Ct. at 1050. Dr. Olley agreed that the "opportunities" to show adaptive abilities "are constrained in prison," but the experts "wanted to know as well as [they] could what [Hill] was doing currently." Atk. Tr. 862. He recognized that "[i]t is impossible to assess all [of] Mr. Hill's adaptive behavior while he is in prison." *Id.* at 869. Dr. Huntsman, too, acknowledged that observations of adaptive skills in prison did not "give a great deal of information because of the limitations derived from the conditions of confinement." *Id.* at 1136.

Critically, with respect to both alleged errors that the Sixth Circuit pinpointed, the court ignored the *reason* why the experts were forced to rely on subjective judgments tied to anecdotal evidence. All three primary experts (including Hill's) agreed that Hill malingered on the adaptive-skills testing, so "no psychometric assessment of Hill's current adaptive functioning was possible." Pet. App. 341a. As Dr. Olley explained, "I had never encountered a person with [an intellectual disability] who was able to malinger or fake bad as consistently as Mr. Hill did in the evaluation that we performed." Atk. Tr. 781. "Thus, the doctors were forced to rely on collateral sources in reaching their conclusions," Pet. App. 341a, because Hill's "lack of cooperation rendered impossible the task of the three psychologists in conducting an adaptive behavior assessment," *id.* at 454a. *Moore* says nothing about a decision to use anecdotal evidence under these facts—when a defendant malin-

gers on tests. There, the experts *agreed* that the defendant's "adaptive-functioning scores fell more than two standard deviations below the mean." *Moore*, 137 S. Ct. at 1047. Those are the scores that Hill prevented the experts here from obtaining.

* * *

If a circuit decision clashes with the Court's cases when considered under de novo review, it plainly exceeds federal authority when assessed against AEDPA's deferential rules. *Berghuis v. Thompkins*, 560 U.S. 370, 389 (2010). The Sixth Circuit's departure from *Moore* further justifies the Court's intervention.

## III. Compelling Reasons Justify The Court's Discretionary Review

Beyond the conflicts with cases from this Court and other circuit courts, additional reasons cement the need for the Court's review—whether through a summary reversal or an opinion after full briefing and argument. To begin with, this would not be the first death-penalty case from the Sixth Circuit to merit a reversal. *Jenkins v. Hutton*, 137 S. Ct. 1769, 1773 (2017); *White v. Wheeler*, 136 S. Ct. 456, 458 (2015); *Woodall*, 134 S. Ct. at 1701; *Parker*, 567 U.S. at 38; *Bobby v. Dixon*, 565 U.S. 23, 24 (2011); *Bobby v. Mitts*, 563 U.S. 395, 400 (2011); *Bobby v. Van Hook*, 558 U.S. 4, 4-5 (2009). The decision below shows the need for this Court to "again advise[] the Court of Appeals that the provisions of AEDPA apply with full force even when reviewing a conviction and sentence imposing the death penalty." *Wheeler*, 136 S. Ct. at 458.

In that respect, the Sixth Circuit's decision undercuts a primary goal of AEDPA. As the law's name

suggests, "Congress enacted AEDPA to reduce delays in the execution of . . . criminal sentences, particularly in capital cases." *Woodford v. Garceau*, 538 U.S. 202, 206 (2003). The law aimed to change a system that produced "the virtual nullification of state death penalty laws through a nearly endless review process." H.R. Rep. No. 104-23, at 10 (1995). AEDPA thus promotes the States' "significant interest in meting out a sentence of death in a timely fashion." *See Nelson v. Campbell*, 541 U.S. 637, 644 (2004).

The Sixth Circuit's decision also conflicts with the principle that "[s]tate courts are adequate forums for the vindication of federal rights." *Burt v. Titlow*, 571 U.S. 12, 19 (2013). Here, not long after *Atkins*, the state courts followed a process for assessing Hill's *Atkins* claim that was both thorough and balanced. Their final judgment on Hill's claim resulted from 11 days of hearings, five thorough expert opinions, and two reasoned decisions. This case was anything but an "'extreme malfunction[] in the state criminal justice system[].'" *Donald*, 135 S. Ct. at 1376 (citation omitted). The Ohio judges instead undertook "good-faith attempts to honor [Hill's] constitutional rights." *Harrington*, 562 U.S. at 103.

Lastly, the Sixth Circuit's decision conflicts with "important interests of federalism and comity." *Donald*, 135 S. Ct. at 1376. *Any* federal decision that invalidates a state judgment "'disturbs the State's significant interest in repose for concluded litigation, denies society the right to punish some admitted offenders, and intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority.'" *Harrington*, 562 U.S. at 103 (citation omitted). So the Court has seen fit to summarily reverse a federal AEDPA decision even in a case involving "a

single count of possession with intent to deliver cocaine." *Woods v. Etherton*, 136 S. Ct. 1149, 1150 (2016). But this is no ordinary case. It has now been almost 33 years since 12-year-old Raymond Fife set off for a friend's house on a late-summer bike ride, only to be brutally tortured, raped, and murdered before he got there. Pet. App. 494a-96a. During those three decades, Hill has received substantial process, as shown by this petition's page worth of citations to related opinions. A federal decision that "frustrates . . . 'the States' sovereign power to punish'" in a case like this one warrants close scrutiny. *Calderon v. Thompson*, 523 U.S. 538, 555 (1998) (citation omitted). The victims of Hill's crime deserve to "move forward knowing the moral judgment [of the State] will be carried out." *Id.* at 556.

All told, the Sixth Circuit's decision elevates its views over the interests and judgments of Congress, Ohio's courts, the People of Ohio, and the victims of Hill's murder. The decision exemplifies Justice Jackson's opinion that simply because a federal court has the authority to disagree with a state court "is not proof that justice is thereby better done." *Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring in result). It must not be allowed to stand.

## CONCLUSION

The Court should grant the petition for certiorari and reverse.

Respectfully submitted,

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JULY 2018